

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY T. ROBINSON,

Defendant-Appellant.

UNPUBLISHED

May 15, 2003

No. 238496

Oakland Circuit Court

LC No. 2001-178251-FC

Before: Markey, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for armed robbery, MCL 750.529, for which he was sentenced to twelve to forty years' imprisonment as a third-habitual offender, MCL 769.11. We affirm.

On appeal, defendant argues that the trial court erred in failing to grant his motion for a new trial and request for an evidentiary hearing because his attorney's failure to present evidence that would have supported his defense denied him a fair trial and his right to the effective assistance of counsel. We disagree. A trial court's decisions on a motion for a new trial and request for evidentiary hearing are reviewed for an abuse of discretion. *People v Collins*, 239 Mich App 125, 138-139; 607 NW2d 760 (1999); *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999).

Defendant claims that the entire case was a credibility contest between himself and the victim, his employer. Defendant alleges that on the day of the incident, he went to work to collect his pay and to notify his employer that he was quitting because of the increased work load and hours resulting from another employee quitting. After collecting his pay, defendant made his announcement and a physical fight ensued, which resulted in defendant punching the victim in the face several times. Defendant alleges that the victim's armed robbery charge was the fabricated result of the altercation. To the contrary, the victim testified that on the day of the incident he did not owe defendant money because he had paid defendant the previous Saturday for the hours that he had worked. Although Saturday was not the usual payday, he made an exception because defendant had just been released from prison and had no money and needed to buy clothes and shoes. The victim further testified that on the day of the incident, which was the usual payday, defendant arrived at work and, shortly thereafter, when the victim's back was turned, defendant began choking him and then striking him on the head with what felt and

looked like a pipe. Defendant demanded money and the victim complied by handing him the payroll cash.

There were no eyewitnesses to the incident, however, defendant apparently wanted to challenge the victim's credibility by presenting testimony from two other employees and his parole officer to establish the days that defendant worked and that his employer always paid his payroll in cash. Defendant's attorney, he claims, did not pursue his request. Defendant also requested a copy of the victim's medical and payroll records, which his attorney did not acquire. Accordingly, in his motion for new trial, defendant argued that he was denied his right to present an effective defense, his right to a fair trial, and the effective assistance of counsel. In support of his motion and request for evidentiary hearing, defendant attached his affidavit attesting to his requests. At the hearing on the motion, the prosecutor argued that none of the evidence that could have been generated by defendant's alleged requests would have buttressed his defense that he did not commit an armed robbery against his employer. The trial court agreed with the prosecution, holding that after hearing all of the evidence, the court resolved the credibility issue in favor of the victim, and that defendant's proposed evidence would not have "shed any light at all on what transpired that morning." We cannot conclude that the trial court clearly abused its discretion denying both the motion for new trial and the request for evidentiary hearing.

Defendant's defense to the charge was that he did not commit armed robbery – the victim's allegations were fabricated following a physical altercation that occurred after defendant received his rightful wages. To establish armed robbery, the prosecutor had to prove "(1) an assault and (2) a felonious taking of property from the victim's person or presence (3) while the defendant is armed with a dangerous weapon." *People v Watkins*, 247 Mich App 14, 33; 634 NW2d 370 (2001). Defendant admitted that he struck the victim in the face several times but denied taking money or using a dangerous weapon. However, the proposed evidence that defendant complains his attorney should have presented could not have provided an effective defense against the charge. In other words, establishing the days that defendant worked for the victim and that he was always paid in cash would not disprove that defendant unlawfully took money from the victim while armed with a dangerous weapon on the day of the incident. Consequently, defendant's attorney's alleged failure to investigate or present defendant's proposed evidence did not result in a denial of defendant's right to the effective assistance of counsel, i.e., his attorney's representation did not fall below an objective standard of reasonableness and was not so prejudicial that defendant was denied a fair trial. See *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). As the trial court noted, the outcome of the case turned on a credibility determination which, in this bench trial, was within the province of the trial judge and will not be disturbed on appeal. See *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Jackson*, 178 Mich App 62, 64-65; 443 NW2d 423 (1989). Therefore, the trial court did not abuse its discretion when it denied defendant's motion for a new trial and request for an evidentiary hearing.

Defendant also argues, for the first time on appeal, that he is entitled to a new trial because the Korean interpreter was not a qualified expert and interfered with his right of confrontation because he did not provide a verbatim translation of the victim's testimony. Because defendant failed to object to the interpreter's qualifications or translations at any time during the contested testimony, our review is for plain error that affected defendant's substantial

rights, i.e., error affecting the outcome of the proceedings. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

After review of the record, we conclude that defendant has forfeited this issue on appeal. During the victim's testimony, the Korean interpreter was only used intermittently because the victim spoke and understood English fairly well. However, during defense counsel's voir dire of the victim prior to admission of the pipe defendant allegedly used to strike him, there were a couple of instances where defense counsel and the victim were speaking at the same time, causing the trial judge to intervene and clarify the testimony. Hence, the trial court properly exercised its responsibility to control the trial proceedings. See MCL 768.29; MCR 6.414(A). The trial court's questioning of the witness was also proper and within the wide discretion accorded a trial court in a bench trial. See MRE 614(b); *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996); *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996). Further, the interpreter properly translated some of the court's instruction and questions to the victim.

Defendant also complains of instances during his cross-examination when the victim and the interpreter had a few exchanges of dialogue in Korean that were not translated. However, these exchanges were very short and were promptly interrupted by the trial judge even without an objection by defendant's counsel. Although an interpreter is to give a translation "in a simultaneous, continuous, and literal manner, without delay, interruption, omission from, addition to, or alteration of the matter spoken," the occasional and minor lapses in simultaneous and literal translation here did not deprive defendant of his right of confrontation or render the trial fundamentally unfair. See *People v Cunningham*, 215 Mich App 652, 654-655; 546 NW2d 715 (1996). Further, defendant's claim that the interpreter was unqualified, as evidenced by this dialogue, is without merit. In sum, defendant has failed to establish plain error warranting reversal of his conviction.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra